

FILED

Clerk

District Court

AUG - 1 2005

For The Northern Mariana Islands

By _____

(Deputy Clerk)

1 DAVID G. BANES, ESQ.
 2 O'Connor Berman Dotts & Banes
 2 Second Floor, Nauru Building
 3 P.O. Box 501969
 3 Saipan, MP96950
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5 Attorneys for Plaintiff Steven Parks

6

7 **IN THE UNITED STATES DISTRICT COURT**
FOR THE NORTHERN MARIANA ISLANDS

8 **STEVEN PARKS,**) **CIVIL CASE NO. 04-0013**
 9)
 10 **Plaintiff,**) **DECLARATION OF DAVID G. BANES**
 11) **vs.**) **IN SUPPORT OF MOTION FOR FEES**
 12)
 13)
 14) **Judge: Munson, Chief Judge**
 15 **EDWARD CAMACHO, in his official and personal capacity; DEPARTMENT OF**) **Date: September 1, 2005**
 16 **PUBLIC SAFETY, ELIAS SARALU and DOES 1-10,**) **Time: 9:00 a.m.**
 17)
 18 **Defendants.**)

19

20 I, David G. Banes, declare under the penalty of perjury that following is true and based
 21 on my personal knowledge.

22

23 1. Before filing our original Motion for Attorney Fees, I went through the billing
 24 statements attached as Exhibit A to my declaration and determined some attorney time should
 25 not be included in the Motion. I therefore wrote "no charge" and instructed our staff to not
 26 include those charges in the summary attached as Exhibit A to my declaration. It appears
 27 however some of those charges may have been mistakenly included in Exhibit A.

28

2. Accordingly, I attach as Exhibit 1 a revised summary. Any discrepancy in time
 29 between the original Exhibit A and this revised Exhibit 1 should be resolved in favor of this
 30 revised Exhibit 1 as the hourly time and expenses are lower or the same.

ORIGINAL

1 3. In Exhibit 1, I have included my time in drafting the original motion and
2 accompanying declaration as well as Plaintiff's Reply Memorandum In Further Support as well
3 as this Declaration.

4

5 4. As stated in my previous declaration, the primary purpose of this litigation was to
6 get Mr. Parks into a facility that could treat him properly. This litigation achieved 100% of that
7 goal. The process was made difficult as Defendants refused to cooperate in suggesting or
8 finding the appropriate facility in California. As Ms. Knapp, as CHC's lawyer, was refusing to
9 allow us to talk to Mr. Parks' treating physicians, I twice wrote to Mr. Lochabay that I would
10 force the issue by bringing it up with the Court at the next status conference. *See e.g.* Exhibits H
11 and J.

12

13 5. The morning before the next scheduled status conference, I met with Mr.
14 Lochabay and Ms. Knapp. Ms Knapp was helpful in explaining the dangers of giving money to
15 Mr. Parks as he may lose his medicare status and how to avoid such potential problems.

16

17 6. Ms. Knapp also explained that the Government would not actively assist in
18 finding an appropriate facility due to concerns about potential liability as a consequence of
19 selecting the facility. She later sent over a long-list of potentially helpful sources of
20 information. *See* Exhibits K and L.

21

22 7. We appreciated Ms. Knapp's help but we would have preferred if she, being
23 pragmatic, had persuaded CHC to waive the fee for us talking to Mr. Parks' treating physicians.
24 Without any medical practitioner's guidance, it was difficult to find the appropriate facility.

25

26 8. So the fees spent in finding Mr. Parks a proper treatment center were necessary.

1 9. Similarly the fees spent in disputing Defendant's Initial Disclosures were also
2 necessary and required as Defendants in their Initial Disclosures listed as witness persons named
3 in the 22 previous times Mr. Parks had been arrested. There was no listing as to witnesses
4 specific to the alleged incident or Defendants' attempts to comply with the ADA or provide
5 training to officers to comply with the ADA. Worse, Defendants did not disclose one single
6 document. Defendants initially refused to amend their disclosures and said Plaintiff should
7 instead conduct formal discovery. *See* Exhibits B, C, D and E. We were forced to research and
8 explain the Judicial Reform Act of 1992 which amended Rule 26 was intended to force parties
9 to provide information "without awaiting formal discovery requests." *Id* at Exhibit C. The issue
10 was never fully resolved although Defendants did provide some documents voluntarily. *See*
11 Exhibit E.

12
13 10. I have been practicing law since 1986. I practiced in New York City from 1986
14 until 1992. I was admitted to practice in the Southern and Eastern District Courts of New York.
15

16 11. I have been practicing here in the Commonwealth since 1992. It is only recently
17 that I have become involved in § 1983 claims.
18

19 12. I took this case only after NMPASI and Micronesian Legal Services decided not
20 to take it. A health care provider recommended me to Mr. Parks.
21

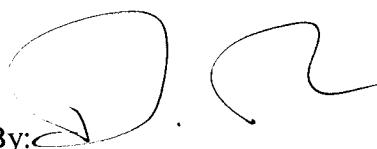
22 13. Mr. Bozman has been a practicing lawyer since June 2003 and in the
23 Commonwealth since 2004.
24

25 14. Mr. Ouslander in September 2005 will be a third year law student at University
26 of Michigan School of Law.
27

1 15. Ms. Aura Sabangan is a lawyer in the Philippines but works at our office since
2 1999 as a paralegal.
3

4 16. Ms. Chang-Sanders is a lawyer from Taiwan with an LLM from a law school in
5 the United States.
6
7
8

9 Dated: August 1, 2005.
10
11

12 By: 
13 DAVID G. BANES
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August 11, 2004

BY TELECOPY

**URGENT
AMENDED**

Edward T. Buckingham, Esq.
 Justin Wolosz, Esq.
 David Lochabay, Esq.
 Office of the Attorney General
 Caller Box 1007, Capitol Hill
 Saipan, MP96950
 Fax No.: 664-2349

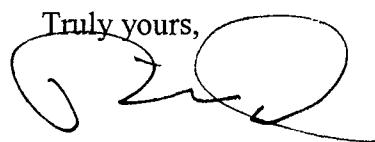
**Re: *Steven Parks v. DPS*
*CNMI v. Parks***

Dear Counsel:

Steve Parks was transferred from DOC to the Psychiatric Ward apparently because he harmed himself (which he has repeatedly done in the past). However CHC does not want to keep him. We informed CHC that Steve has repeatedly told myself and Jennifer Ahnstedt that if he is transferred back to **DOC** he will harm himself again including possibly by electrocution. Despite his credible threat, and repeated history of DPS not being able to stop Mr. Parks from harming himself, he is being transferred back to **DOC**.

Please, can any of you help convince CHC that Mr. Parks needs to be in the Psychiatric Ward *not* at DOC.

Please let me know. Thank you.

Truly yours,


David G. Banes

A

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August 16, 2004

Delivered by Telecopy

David W. Lochabay
 Office of the Attorney General
 Caller Box 10007
 Saipan, MP 96950
 Fax No. 664-2349

Re: *Parks v. DPS et al.*

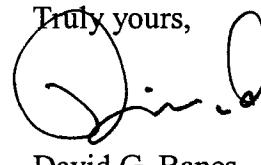
Dear David:

We are in the process of amending the Complaint and we hope to have a proposed draft for you today or tomorrow.

Looking over Defendants' Initial Disclosures, we believe they do not meet the requirements of Rule 26(a)(1). According to the Rule, Defendants must actually name each individual likely to have discoverable information that Defendants "may use to support" their defenses AND must disclose "the subjects of the information." Simply producing documents (especially given the volume) is not enough as we have no idea which officers mentioned in each of the reports may be used by Defendants to "support" their "defenses" let alone what is their "information".

Relatedly, Rule 26(a)(1)(B) does allow a party to simply produce documents. But it must be "all documents" and "tangible things" that Defendants "may use to support" their "defenses." If the only documents Defendants will use are these documents, fair enough. But we are highly skeptical that Defendants will use only these reports to claim DPS does comply with the ADA for instance.

Would you please let us know if Defendants will agree to revising their Initial Disclosures? Thanks.

Truly yours,


David G. Banes

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August 26, 2004

Delivered by Telecopy and Mail

David W. Lochabay
 Office of the Attorney General
 Caller Box 10007
 Saipan, MP 96950
 Fax No. 664-2349

Re: *Parks v. DPS et al.*

Dear David:

This is to confirm that Defendants refuse to amend their Initial Disclosures. While we do appreciate Defendants' good faith effort in supplying documents, nonetheless Defendants' Disclosures do not meet Rule 26(a) requirements. It is unfortunate that you (apparently) would not even consider making the necessary amendments. From the tone of our discussion, you appear to think I am being unreasonable and that we should instead proceed with "traditional" discovery requests. But Rule 26(a) was amended precisely to limit the necessity for "traditional" discovery:

Through the addition of paragraphs (1)-(4), this subdivision imposes on parties a duty to disclose, without awaiting formal discovery requests, certain basic information that is needed in most cases to prepare for trial or make an informal decision about settlement.

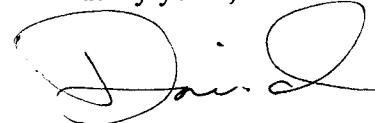
Advisory Committee Notes 1993 Amendment. In fact these amendments were intended "to accommodate the Civil Justice Reform Act of 1990" in order "to reduce time and expense of litigation". *Id.* This need to reduce the "time and expense of litigation" is even more important here. This is a civil rights suit for an indigent client who cannot afford unlimited attorney fees. Moreover the Government should want to assist us in keeping attorney fees low as if Mr. Parks wins at trial, we have a right to attorney fees.

As to any inadequacy as to our Disclosures, that is a separate issue. If you have some specific concerns, please let me know and I will try to address them. But a general

reaction that they "aren't good enough" or words to that effect is not very helpful. Also, we note that you raised such concerns for the first time only in response to our telephone follow-up to our written request for Defendants to amend Defendants' disclosures.

We will hold off filing any Motion to Compel until Tuesday August 31st in the hope that once tempers cool, Defendants may reconsider. Thank you.

Truly yours,



David G. Banes

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August 31, 2004

Delivered by Telecopy

David W. Lochabay
 Office of the Attorney General
 Caller Box 10007
 Saipan, MP 96950
 Fax No. 664-2349

Re: *Parks v. DPS et al.*

Dear David:

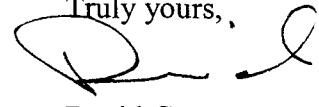
We are always open to resolving any matter, especially those involving discovery, without resorting to judicial involvement. So of course we will give Defendants more time to consider their options. Is Friday enough time?

Nonetheless we do not believe this particular issue is "petty".

As pointed in my last letter, Rule 26 was significantly revised so as to impose an affirmative burden on each to disclose not only documents but witnesses. And while we do appreciate the documents we received, I doubt that these constitute all of Defendants' documents related to their defenses. Indeed pursuant to Rule 37(c)(1) we will object to and move to strike any document, data compilation or other "tangible thing" that Defendants try to introduce at trial that is not listed in Defendants' Disclosures. So our concerns are very real and they are substantive, not petty.

Finally, as to the last paragraph of your letter, yes we did agree to reciprocate the favor and turn over copies of the documents listed on Plaintiff's disclosures. However, we are not obligated to do so; a party must either list documents OR turn them over. The Rule does not require both. So in fact, our Initial Disclosures are not inadequate as to this issue anyway. Also, the reason we have not turned the medical records over to you is we are still waiting for CHC to produce them. Once we have them we will turn them over.

We look forward to the possibility of resolving this issue shortly. Thank you.

Truly yours,

David G. Banes

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September 30, 2004

Delivered by Telecopy

David W. Lochabay
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Caller Box 10007
Saipan, MP 96950
Fax No. 664-2349

Re: *Parks v. DPS et al.*

Dear David:

We still have some serious issues as to Defendants' Initial Disclosures. If necessary we can discuss them further.

However, I am trying to find a solution which will take care of not only the civil case but also Steve's criminal case as well. We have found a hospital in Ventura County (near Steve's mother) which treated Steve in the past. Because Steve has social security and medicare, California cannot refuse to treat him. Our proposed solution is for the Commonwealth to buy him a one-way ticket to California, some small spending money (to be sent or payable to his mother) to carry him over till he gets on his feet there and a modest sum for attorney fees.

All told, this sum will be much less than the Commonwealth giving him a medical referral which they did years ago but never came up with the money (talk to Dr. Battone). It will also be much more economical and less of a drain of the CNMI's resources than having him stay here - - especially when everyone I have talked with admits he cannot get the medical care he needs here (see Drs. Battone, Gutowski, Post, Conrad and McCullough). If we cannot agree or Defendants will not even negotiate, please let me know when Defendants are available for an early settlement conference.

Please let me know. Thank you for your anticipated cooperation.

Truly yours,



David G. Banes

bcc: Public Defender's Office
3083-01-040930-LTR-DLochabay-rcr

E



Commonwealth of the Northern Mariana Islands
Office of the Attorney General

2nd Floor Hon. Juan A. Sablan Memorial Bldg.
Caller Box 10007, Capitol Hill
Saipan, MP 96950

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Fax: (670) 664-2349

Immigration Division
Tel: (670) 236-0922/0923
Fax: (670) 664-3190

Criminal Division
Tel: (670) 664-2366/2367/2368
Fax: (670) 234-7016

October 1, 2004

Re: Parks v. CNMI

VIA FAX TO 234-5683

David Banes, Esq.
O'Connor Berman Dotts & Banes
Nauru Bldg.
Saipan, MP 96950

Dear David:

Thank you for your letter of September 30, 2004.

Your settlement proposal has merit and will be given careful consideration. However, we need some numbers to properly evaluate it. Please let us know exactly how much "spending money" for Mr. Parks you are seeking, as well as the amount of attorney's fees sought.

If we were able to do something like this, it would probably need to be a condition of the agreement that, should Mr. Parks return to the Commonwealth within an agreed period of time, he would have to repay the monetary consideration received from the settlement and would be subject to criminal prosecution on any charges not prosecuted by reason of the settlement.

I look forward to hearing from you.

Yours very truly,

David Lochabay
Asst. Attorney General



F

**FAXED
10/21/07**

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October 21, 2004

Delivered by Telecopy

Debra Knapp, Esq.
 Attorney General's Office
 PMB 514 Box 10000
 Saipan, MP 96950
 Fax No. 664-2349

Re: Drs. Gutowski and Hay

Dear Debra:

It is unfortunate that you communicate only in writing -- apparently you are more interested in trying to establish some sort of inaccurate and biased written record rather than trying to reach a mutually acceptable solution.

Once again you have your facts wrong. We contacted Drs. Gutowski and Hay in their capacity as Mr. Parks' *treating* physicians for Mr. Parks. Indeed your letter implicitly concedes as much (your letter states the doctors will only testify as Mr. Parks' "treating physicians"). We contacted the Doctors to determine Mr. Parks' current medical condition, past medical history and future medical care. We also contacted them as to prospective treatment: it is generally conceded by everyone who has treated Mr. Parks (including Drs. Buttone and Gutowski) that there are not adequate facilities here to treat him. We are trying to find an appropriate facility to get him treated somewhere on the Mainland. We need Mr. Parks' treating physicians' help to find the appropriate facility. It is distressing to say the least that you are more interested in creating road blocks rather than helping Mr. Parks receive the appropriate medical care he so desperately needs.

Also, please provide us with a copy of whatever authority you believe you have to impose a sanction on us that does not conform with the Administrative Procedures Act. Until you do so, your unilateral imposition of fees will be ignored. Please also explain to us how you do not have a conflict of interest: your employer (the AG's Office) is representing Defendants. But you claim to represent the doctors as witnesses (did they ask you to represent them or did you just grab this title?). We also note you seek to only

charge us and not Mr. Lochabay for his use of the physicians even though (obviously) he could not have contacted them attempting to seek medical care for Mr. Parks.

Please provide us with copies of whatever authority you believe is relevant as to your authority stop us from hiring CHC physicians privately to do work that does not conflict with their work at CHC. We understand their contracts impose no such imposition. We routinely had such a relationship with many CHC doctors before you got involved. Also, please state exactly what "forensic services" we requested "in another case" for which we "did not pay". If you are referring to Winifreda Sablan you are absolutely, 100% wrong. Instead, as my previous letters to you pointed out, we were requesting information which should have been provided initially and for which we had already paid.

As to the charge of unprofessional conduct, it is outrageous. If you have a complaint to make, take it up with the Disciplinary Committee or Judge Munson. We in turn find your overly officious meddling in patients seeking treatment and care from CHC physicians and staff not only unprofessional but it also lacks any sense of empathy for victims who are trying the best they can to get treatment.


Yours,
David G. Banes

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November 1, 2004

Delivered by Telecopy

David W. Lochabay
 Office of the Attorney General
 Caller Box 10007
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 Fax No. 664-2349



Re: *Parks v. DPS et al.*

Dear David:

Sorry for not replying sooner but I got caught up with other matters.

We are still very keen in trying to resolve this matter along the lines suggested in my last letter. However Ms. Knapp's involvement could be a road-block and if I cannot find an appropriate facility from other sources, we will be forced to think of alternatives such as scheduling a conference with Judge Munson and explain that Ms. Knapp will not let us contact Mr. Parks' treating physicians to obtain appropriate medical services in the Mainland. I suspect Judge Munson will take a dim view of such obstruction.

Accordingly I suggest Defendants have an extra 30 days to respond to our discovery. By then we should know which direction we are heading (I hope).

Please let me know if this is acceptable.

Truly yours,

David G. Banes

H

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November 3, 2004

Delivered by Telecopy

David W. Lochabay
Office of the Attorney General
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Fax No. 664-2349

Re: *Parks v. DPS et al.*

Dear David:

We have the Government's discovery requests. As we granted Defendants a 30-day extension to see if we can work this one out, may we similarly have a 30-day extension?

Please let me know. Thank you.

Truly yours,



David G. Banes

3083-01-041103-LTR-DLochabay-leb



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November 12, 2004

Delivered by Telecopy

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 Edward T. Buckingham, Esq.
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Re: *Parks v. DPS et al.*

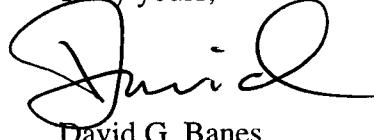
Dear David and Ed:

Well, Steve sliced himself again while in DPS custody. One of these days he is going to cut himself so badly as to cause severe permanent injury or death. I really urge the Government to help us get him the proper medical treatment before it is too late. As you know, there is no appropriate facility here but there is in California.

The problem is Ms. Knapp won't let me talk with Steve's treating physicians.¹ So instead, will the Government talk with them? I attach a list of some facilities in California that may be appropriate which we just got off the internet. Would one of you please meet with the appropriate psychiatrist (if not Buttone or Gutowski) and let us know which facility may be able to treat Steve or recommend an alternative facility. Obviously, the sooner we get him in the direction of the appropriate facility the better for everyone.

Thanks for your hoped for cooperation.

Truly yours,



David G. Banes

att: as stated

3083-01-041112-LTR-DLochabay-EBuckingham-rcc

¹ To be more accurate, she insists we must pay an hourly fee in advance even though she knows all we want is to get a list of facilities that could treat Steve and she knows that Steve cannot pay the required fee. If not resolved beforehand, I will bring this issue up at the next status conference as Ms. Knapp's obstinacy is placing Steve at risk.

J

